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AUG 17 2009

OFFICE OF PETITIONS

In re Application of :
St. John : LETTER REGARDING PTA
Application No. 09/387,195 :
Filed: August 31, 1999 (CPA filed July 1, 2002) :
Atty. Dkt. No.: 10022/111 :

This letter is in response to the "REQUEST FOR REVIEW OF PATENT TERM ADJUSTMENT" filed March 16, 2009. The Office thanks patentees for their good faith and candor in bringing this to our attention. No fee is due in connection with this matter.

Applicants indicate that while the Notice of Allowance sets forth a patent term adjustment of 494 days, applicant is of the belief that the application would not be entitled to any patent term adjustment given the terminal disclaimer recorded against the application.

As requested, the calculation of patent term adjustment has been reviewed and error has been found, as set forth herein.

The adjustment of 287 days in connection with the mailing of the September 10, 2004 non-final Office action was entered in error. In accordance with 37 CFR 1.702(a)(2), the non-final Office action was timely mailed September 10, 2004 within four months of date that the compliant appeal brief was filed on June 23, 2004.

Further review of the calculation of adjustment reflects an error in the reduction of 91 days in connection with the submission of the appeal brief on November 23, 2005. Notice of Appeal was filed August 24, 2005. Submission of the appeal brief in response to the Notice of Appeal is not grounds for reduction within the meaning of 37 CFR 1.704(c)(8).

The remaining adjustment and reductions have been reviewed and are not found to contain error.

As to applicant's contention that the application is not entitled to an adjustment because a terminal disclaimer has been recorded against it, applicant is advised that the filing of the terminal disclaimer has no effect on the determination of patent term adjustment *set forth* on any patent issuing from this application. It is true that 35 U.S.C. 154(b)(2)(B) provides that:

No patent the term of which has been disclaimed beyond a specified date may be adjusted under this section beyond the expiration date specified in the disclaimer.

Moreover, 37 CFR § 1.703(g) provides that:

No patent, the term of which has been disclaimed beyond a specified date, shall be adjusted under § 1.702 and this section beyond the expiration date specified in the disclaimer.

However, the provisions of § 154(b), for adjustment due to examination delay, apply to original applications, other than designs, filed on or after May 29, 2000. The Office calculates patent term adjustment for examination delay in all eligible applications. In calculating the patent term adjustment, the Office does not differentiate between applications that have terminal disclaimers and those that do not. Moreover, the Office does not undertake the burdensome task of reviewing every application with a terminal disclaimer to determine if the patent term adjustment accorded would adjust the term beyond the expiration date specified in the disclaimer.

Rather, on issuance of the application, in compliance with 35 U.S.C. 154(b) and 37 CFR § 1.703(g), it is indicated in the patent that the patent term adjustment indicated therein is subject to any disclaimer. Moreover, it is also stated therein that the patent is subject to a terminal disclaimer.

In view thereof, as of the time of allowance, the application is entitled to an adjustment of 298 days (adjustments totaling 339 days less reductions totaling 41 days).

As applicants are advising us of a potential error in providing too much patent term adjustment in this application, no fee is due in connection with this matter.

The patent term adjustment indicated in the patent will include any additional patent term accrued pursuant to §§ 1.702(a)(4) and 1.702(b).

This application is being forwarded to the Division of Data Management for issuance of a patent.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3205.



Alesia M. Brown
Petitions Attorney
Office of Petitions

Enclosure: Copy of Adjustment PAIR Calculation

Day : Sunday
Date: 8/16/2009

PALM INTRANET

Time: 13:47:20

PTA Calculations for Application: 09/387195

Application Filing Date:	08/31/1999	PTO Delay (PTO):	626
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	132
Post-Issue Petitions:	0	Total PTA (days):	298
PTO Delay Adjustment:	-196		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
123	08/16/2009	ADJUSTMENT OF PTA CALCULATION BY PTO		287	
122	08/16/2009	ADJUSTMENT OF PTA CALCULATION BY PTO	91		
114	12/31/2008	MAIL NOTICE OF ALLOWANCE			
113	12/30/2008	ISSUE REVISION COMPLETED			
112	12/30/2008	DOCUMENT VERIFICATION			
111	12/30/2008	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
110	12/22/2008	NOTICE OF ALLOWABILITY			
106	11/19/2008	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
105	12/08/2008	FINISHED INITIAL DATA CAPTURE			
104	11/19/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
103	11/19/2008	REFERENCE CAPTURE ON IDS			
102	12/09/2008	DATE FORWARDED TO EXAMINER			
101	11/19/2008	REQUEST FOR CONTINUED EXAMINATION (RCE)			
100	12/09/2008	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
99	11/19/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
98	11/19/2008	WORKFLOW - REQUEST FOR RCE - BEGIN			
97	09/30/2008	EXPORT TO INITIAL DATA CAPTURE			
96	09/22/2008	MAIL NOTICE OF ALLOWANCE			
95	09/19/2008	ISSUE REVISION COMPLETED			
94	09/19/2008	DOCUMENT VERIFICATION			
93	09/19/2008	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			

92	09/15/2008	NOTICE OF ALLOWABILITY			
91	06/30/2008	DATE FORWARDED TO EXAMINER			
90	06/02/2008	RESPONSE AFTER NON-FINAL ACTION			
89	01/10/2008	REFERENCE CAPTURE ON IDS			
88	01/10/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
87	04/15/2008	MAIL NON-FINAL REJECTION			
86	04/14/2008	NON-FINAL REJECTION			
85	01/10/2008	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
84	02/05/2008	PARALEGAL TD ACCEPTED			
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80	01/16/2008	RESPONSE AFTER NON-FINAL ACTION			
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77	10/15/2007	NON-FINAL REJECTION			
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68	07/21/2006	DATE FORWARDED TO EXAMINER			
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65	07/28/2003	APPEAL BRIEF FILED			
64	03/21/2006	CASE DOCKETED TO EXAMINER IN GAU			
63	12/02/2005	DATE FORWARDED TO EXAMINER			
62	11/23/2005	SUPPLEMENTAL APPEAL BRIEF			
61	11/23/2005	REQUEST FOR EXTENSION OF TIME - GRANTED			
60	08/24/2005	NOTICE OF APPEAL FILED			
59	06/02/2005	MAIL FINAL REJECTION (PTOL - 326)	53		53

58	05/31/2005	FINAL REJECTION			
56	05/09/2005	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
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53	12/10/2004	RESPONSE AFTER NON-FINAL ACTION			
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49	06/23/2004	APPEAL BRIEF FILED			
48	06/04/2004	NOTICE -- DEFECTIVE APPEAL BRIEF			
47	02/21/2004	DATE FORWARDED TO EXAMINER			
46.1	07/28/2003	DEFECTIVE / INCOMPLETE APPEAL BRIEF FILED			
46	07/28/2003	APPEAL BRIEF FILED			
45	07/28/2003	REQUEST FOR EXTENSION OF TIME - GRANTED			
44	05/06/2003	NOTICE OF APPEAL FILED		6	39
43	04/18/2003	MAIL ADVISORY ACTION (PTOL - 303)			
42	04/18/2003	ADVISORY ACTION (PTOL-303)			
41	04/10/2003	DATE FORWARDED TO EXAMINER			
40	04/07/2003	AMENDMENT AFTER FINAL REJECTION			
39	01/30/2003	MAIL FINAL REJECTION (PTOL - 326)			
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37	11/25/2002	CASE DOCKETED TO EXAMINER IN GAU			
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34	11/18/2002	REQUEST FOR EXTENSION OF TIME - GRANTED			
33	07/16/2002	MAIL NON-FINAL REJECTION			
32	07/15/2002	NON-FINAL REJECTION			
31	08/01/2002	DATE FORWARDED TO EXAMINER			
30	07/01/2002	CONTINUING PROSECUTION APPLICATION - CONTINUATION (ACPA)			
29	08/01/2002	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
26	07/01/2002	WORKFLOW - REQUEST FOR CPA - BEGIN			
25	07/01/2002	MAIL ADVISORY ACTION (PTOL - 303)			

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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